



0000154311

ORIGINAL

## ORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED

JUN 25 2014

2014 JUN 25 PM 1 37

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

DOCKETED BY

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR A  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE WASTEWATER  
SERVICES.

DOCKET NO. WS-20794A-11-0140

IN THE MATTER OF THE APPLICATION  
OF DII-EMERALD SPRINGS, L.L.C. FOR  
APPROVAL OF RATES.

DOCKET NO. WS-20794A-11-0279

IN THE MATTER OF THE APPLICATION  
OF DOYLE THOMPSON FOR APPROVAL  
OF A CERTIFICATE OF CONVENIENCE  
AND NECESSITY TO PROVIDE SEWER  
SERVICES.

DOCKET NO. SW-20851A-12-0226

PROCEDURAL ORDER**BY THE COMMISSION:**

On April 3, 2013, a Procedural Order was issued in this consolidated matter scheduling a hearing to commence on July 23, 2013, and establishing other procedural requirements and deadlines.

On May 1, 2013, DII-Emerald Springs, L.L.C. ("DII") filed a Motion Requesting Approval for Witnesses to Testify via Video Conferencing ("Motion"). The Motion was subsequently amended on May 15, 2013, and was granted on June 5, 2013, allowing for telephonic testimony from DII's witness.

On May 28, 2013, Doyle Thompson filed proof that notice of the July 23, 2013, hearing date had been provided to tenants at Copper State Mobile Home & RV Park ("Copper State") with their monthly billing statements, had been publicly posted at Copper State, had been e-mailed to Emerald Springs Homeowners Association ("HOA") members by the HOA's Treasurer, and had been published on May 1, 2013, in the *Palo Verde Valley Times*.

On July 2, 2013, the HOA filed a Motion to Continue July 23-26 Hearing ("HOA Motion"), stating that the HOA and Robhana, Inc. ("Robhana"), both intervenors in this matter, had taken steps to form a sewer district in Ehrenberg, which would render moot the applications pending in this

1 matter. The HOA Motion requested that the hearing be continued for 90 days to allow for the sewer  
2 district to be formed. The HOA further stated that the HOA had contacted all of the parties to this  
3 matter regarding the HOA Motion and that only DII objected to the HOA Motion.

4 On July 3, 2013, a Procedural Order was issued vacating the evidentiary hearing scheduled  
5 for July 23, 2013; ordering that a public comment proceeding instead be held on July 23, 2013; and  
6 ordering each party to file, by October 1, 2013, an update on the status of the sewer district  
7 formation, along with any pertinent supporting documentation and the party's proposal regarding the  
8 process and schedule for the matter going forward.

9 On July 23, 2013, the public comment proceeding was held as scheduled. DII, Robhana, and  
10 Staff appeared; Mr. Thompson and the HOA did not appear. Public comment was received from two  
11 individuals who own property within the service area at issue. Additionally, counsel for Robhana  
12 provided an update on the status of the sewer district formation, indicating that there was already  
13 sufficient property-owner support for the sewer district to be formed, but that efforts were being  
14 made to determine the boundaries of the district area and to identify prospective district board  
15 members.

16 On October 1, 2013, the HOA and Robhana filed a joint status update stating that the petition  
17 for the Ehrenberg Improvement District had been drafted and was expected to be filed in early  
18 October and heard by the La Paz County Board of Supervisors in early November. The HOA and  
19 Robhana further stated that five prospective board members<sup>1</sup> had been identified, that steps were  
20 being taken to amend the boundaries for the district, and that both the HOA and Robhana were  
21 encouraged by the progress made thus far and intended to continue moving forward with the sewer  
22 district formation. Staff also filed its update, recommending that this matter continue to be held in  
23 abeyance pending the outcome of the sewer district formation, which could be finalized as early as  
24 November 2013, and that Robhana be required to file another status update in 60 days regarding the  
25 status and progress of the sewer district formation. DII also filed its status update, reporting that the  
26 other parties had not been in communication with DII except through the joint status update, that DII  
27

---

28 <sup>1</sup> The five individuals are current board members for the area water provider, Ehrenberg Improvement Association.

1 was disappointed by the "lack of pertinent information" in the joint status update, that the purpose of  
2 forming a sewer district is to circumvent the Commission's authority, and that there are a number of  
3 questions to which DII would like answers. DII requested that its questions be answered before any  
4 additional extensions are granted to allow for the formation of the district.<sup>2</sup>

5 On October 8, 2013, a Procedural Order was issued ordering the HOA and Robhana to file, by  
6 December 1, 2013, a joint status update reciting the actions taken toward formation of the sewer  
7 district, copies of documents filed with government entities toward that end, and the parties' proposal  
8 regarding the process and schedule for this matter going forward.

9 On October 10, 2013, the HOA and Robhana filed a supplement to the joint status update  
10 stating that they had inadvertently omitted that they supported Staff's recommendation for this matter  
11 to be continued with a status update required every 60 days.

12 On December 2, 2013, the HOA and Robhana filed a joint status update stating the Petition to  
13 form a sewer district has been signed by the potential district board members, that minor errors in the  
14 district map are being corrected, and that the Petition will be filed with the La Paz County Clerk once  
15 those corrections are completed, probably within the next 10 business days. The HOA and Robhana  
16 requested that the matter be continued for an additional 90 days, with another joint status update  
17 required at that time.

18 On December 4, 2013, by Procedural Order, the matter was continued for 90 days requiring  
19 the HOA and Robhana to file a status update by March 3, 2014.

20 On March 3, 2014, the HOA and Robhana filed a Third Joint Status Update stating that  
21 further progress had been made towards the formation of the sewer district. The HOA and Robhana  
22 further stated that the Petition and supporting documents had been submitted to the La Paz County  
23 Board of Supervisors, and that the parties were waiting for the Board to set a hearing on the Petition.  
24 The HOA and Robhana requested that the matter be continued for an additional 90 days, with another  
25 joint status update required at that time.

26  
27 <sup>2</sup> To the extent that DII owns property within the boundaries of the area proposed for the sewer district, DII should  
28 have the ability to participate and to voice its position in the appropriate venue regarding that formation. The  
Commission does not regulate sewer districts and does not have jurisdiction over their formation.

1 On March 14, 2014, a Procedural Order was issued requiring the HOA and Robhana to file,  
2 by June 3, 2014, "a **joint status update** reciting the actions taken thus far toward formation of a  
3 sewer district for the Ehrenberg area, copies of any documents filed with the county and/or other  
4 governmental entities in furtherance of district formation, and the parties' proposal regarding the  
5 process and schedule for this matter going forward."

6 On June 2, 2014, the HOA and Robhana filed a Fourth Joint Status Update stating that "the  
7 sewer district was formed." The filing did not include any documentation to support the formation of  
8 the sewer district and did not include any proposal for the process and schedule for this matter going  
9 forward.

10 In order to determine how to proceed with the resolution of this docket, it is necessary for the  
11 parties to provide the Commission with complete information regarding the formation of the sewer  
12 district<sup>3</sup> and how the formation of the sewer district impacts the CC&N service area for which both  
13 DII and Mr. Thompson have filed applications for a CC&N. Thus, all of the parties will be required  
14 to make filings to that end.

15 IT IS THEREFORE ORDERED that the **HOA and Robhana shall, by July 30, 2014**, file in  
16 this docket documentation establishing the formation of the sewer district for the Ehrenberg area;  
17 explaining how the formation of the sewer district impacts the CC&N service area for which both DII  
18 and Mr. Thompson have filed applications for a CC&N herein; specifically addressing whether the  
19 entire requested service area is included within the sewer district; providing recommendations for  
20 how this matter should be resolved; and providing any further information of which the Commission  
21 should be aware in determining how to resolve this matter.

22 IT IS FURTHER ORDERED that **DII and Mr. Thompson each shall, by July 30, 2014**, file  
23 in this docket a document explaining how the formation of the sewer district impacts the CC&N  
24 service area for which each has applied for a CC&N herein; specifically addressing whether the entire  
25 requested service area is included within the sewer district; asserting the party's current position  
26 regarding the party's CC&N application filed herein; providing a recommendation for how this

27  
28 <sup>3</sup> For the convenience of the reader and the sake of brevity, the ordering paragraphs herein refer to the sewer district as though it has been formed, although the formation of the district has not yet been established in the record herein.

1 matter should be resolved; and providing any further information of which the Commission should be  
2 aware in determining how to resolve this matter.

3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
4 Communications) applies to this proceeding and shall remain in effect until the Commission's  
5 Decision in this matter is final and non-appealable.

6 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules  
7 31 and 38 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*.

8 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
9 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona  
10 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at  
11 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for  
12 discussion, unless counsel has previously been granted permission to withdraw by the Administrative  
13 Law Judge or Commission.

14 IT IS FURTHER ORDERED that any motion, other than a Motion to Intervene, that is filed  
15 in this matter and that is not ruled upon within 20 calendar days of the filing date of the motion shall  
16 be deemed denied.

17 IT IS FURTHER ORDERED that except as otherwise ordered, any response to a motion shall  
18 be filed within five calendar days of the filing date of the motion

19 IT IS FURTHER ORDERED that except as otherwise ordered, any reply shall be filed within  
20 five calendar days of the filing date of the response.

21 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
22 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
23 hearing.

24 DATED this 25<sup>th</sup> day of June, 2014.

25  
26  
27  
28  
  
SARAH N. HARPRING  
ADMINISTRATIVE LAW JUDGE

1 Copies of the foregoing mailed/delivered  
2 this 25<sup>th</sup> day of June, 2014, to:

3 Henry Melendez  
4 DII-EMERALD SPRINGS, L.L.C.  
212 East Rowland Street, No. 423  
Covina, CA 91723-3146

5 Julie A. LaBenz  
6 CHURCHILL & LABENZ  
1300 Joshua Avenue, Suite B  
Parker, AZ 85344  
7 Attorney for Emerald Springs HOA

8 Steve Wene  
9 MOYES SELLERS & HENDRICKS  
1850 North Central Avenue, Suite 1100  
Phoenix, AZ 85004  
10 Attorney for Robhana, Inc. and Charles Dunn  
Capital, Inc.

11 Curtis Cox  
12 Assistant Attorney General  
Attorney General's Office  
1275 West Washington Street  
Phoenix, AZ 85007  
13 Attorney for Arizona Department of Environmental Quality

Doyle R. Thompson  
COPPER STATE GAME CLUB, R.V.  
AND MOBILE HOME PARK  
P.O. Box 287  
Ehrenberg, AZ 85334

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

Steven M. Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, AZ 85007

14  
15 By:

Rebecca Unquera

16 Rebecca Unquera  
17 Assistant to Sarah N. Harpring  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28